

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2007

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 855

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 855, entitled "A Bill for an Act Relating to Workers' Compensation."

This bill would allow an injured employee to continue to receive medical services when a dispute exists between the injured employee and the employer or employer's insurer regarding whether medical care should continue, until the Director of Labor and Industrial Relations renders a final decision on the matter. Furthermore, this bill would further restrict the rulemaking authority of the Director of Labor and Industrial Relations.

This bill is objectionable because it requires an employer or employer's insurer to continue to pay for medical treatments after the employer or employer's insurer considers the continued treatments to be inappropriate, excessive, or for a non-compensable condition, and after an independent medical examiner has concluded that the treatment the employee is ready to return to work. Requiring an insurer to pay for medical services that were determined unwarranted or unnecessary with no substantive right to recovery until the parties are notified of the Director's decision denying such benefits, will likely result in higher workers' compensation premiums since this adds to the workers' compensation risk exposure of all businesses in Hawaii.

STATEMENT OF OBJECTIONS
HOUSE BILL NO. 855
Page 2

This bill fundamentally changes the balance between employer and employee regarding the method by which medical care can be terminated. It essentially overrides the workers' compensation medical fee schedule and negates the "reasonable and necessary" language in current Hawaii workers' compensation law by requiring an employer or employer's insurer to pay for medical benefits that the Director determines is unreasonable and unnecessary until the parties are notified of the Director's decision, thereby placing in jeopardy the fiscal integrity of the State's workers' compensation system.

The bill additionally restricts the ability to recover inappropriate and unwarranted medical payments by not permitting recapture of these payments prior to the issuance of the Director's decision. This is unfair to those employees who genuinely need their medical treatments by allowing other employees who are fit to return to work to draw down benefits, adversely impacting the workers' compensation fund.

This bill is also objectionable because, by requiring that the Director of Labor and Industrial Relations submit any proposed adoption, amendment, or repeal of workers' compensation rules to the Legislature for approval prior to submission to the Governor, it would limit the Director's ability to promptly respond to the changing needs of the workers' compensation program. It is critical that the Director have the ability to expeditiously make, repeal, and amend rules pertaining to workers' compensation in order to be responsive to the immediate needs of the State. To encumber the Director with the proposed procedure would severely frustrate the Director's and the State's ability to facilitate and promote the efficient execution of the workers' compensation laws.

STATEMENT OF OBJECTIONS
HOUSE BILL NO. 855
Page 3

Finally, this bill requires that the Director of Labor and Industrial Relations' proposed adoption, amendment, or repeal of workers' compensation rules be submitted to both houses of the Legislature and must be approved in their entirety by concurrent resolution. Having given the Director the authority to create, amend and repeal workers' compensation rules, the Legislature's retaining the power to disapprove the Director's proposed adoption, amendment, or repeal of workers' compensation rules may violate the enactment and presentment provisions of the Hawaii Constitution and the separation of powers doctrine.

For the foregoing reasons, I am returning House Bill No. 855 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "Linda Lingle", written in a cursive style.

LINDA LINGLE
Governor of Hawaii